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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,758	09/26/2003	Jean-Laurent Pradel	FR-AM1888 NP	9320
31684 7590 09/18/2008				
ARKEMA INC. PATENT DEPARTMENT - 26TH FLOOR 2000 MARKET STREET PHILADELPHIA, PA 19103-3222				
EXAMINER				
PATTERSON, MARC A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-LAURENT PRADEL,
FABRICE CHOPINEZ, DAMIEN RAULINE,
and PATRICE ROBERT

Appeal 2008-3956
Application 10/671,758
Technology Center 1700

Decided: September 18, 2008

Before CHUNG K. PAK, CHARLES F. WARREN, and
PETER F. KRATZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

DECISION ON APPEAL

Applicants appeal to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 10 and 12 though 14 in the Office Action mailed July 26, 2006. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2007).

We affirm the decision of the Primary Examiner.

An exposition of the claimed invention is not necessary to the issue presented in this appeal.

The Examiner relies upon the evidence in this document (Ans. 3):
Robert (Robert '536) EP 1 136 536 A1 Sep. 26, 2001
(filed Mar. 26, 2001)

The Application was filed September 26, 2003, and claims priority based on France 02/11992 filed September 27, 2002.

Appellants filed a Terminal Disclaimer based on this document with the Amendment filed April 29, 2005:

Robert (Robert '587) US 6,528,587 B2 Mar. 4, 2003
(filed Mar. 26, 2001)

Appellants request review of the ground of rejection of the appealed claims under 35 U.S.C. 103(a) over Robert '536. App. Br. 3.

There is no dispute that the Examiner has established a prima facie case of obviousness over Robert '536 or that the reference is applicable as prior art under the provisions of 35 U.S.C. § 102(b). The principal issue in this appeal is whether Appellants have rebutted the Examiner's prima facie case of obviousness by establishing that Robert '536 is not available as prior art to the claimed invention encompassed by the appealed claims.

Appellants submit that Robert '536 is equivalent to the terminally disclaimed Robert '587 and thus, Robert '536 should not be available as prior art because of, among other things, "the stated purpose of a Terminal disclaimer" and "international treaties." Br. 5- 6 and 6-7. The Examiner submits Robert '536 satisfies the provisions of § 102(b), and the terminal disclaimer does not preclude the operation of this law. Ans. 5-6.

We agree with the Examiner because Robert '536 is a reference separate and apart from Robert '587, and satisfies the provisions of § 102(b) with respect to the filing date of the Application where Robert '587 does not. Appellants' policy contentions are not supported by authority under the facts of this case, and thus, are without merit.

The Primary Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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ARKEMA INC.
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